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parties had understood the legal effect of the words of the instrument in question, would any court have labored to raise the equity? If rescission for mutual mistake of law be allowable, the court of equity might well allow the grantee the option of indemnifying the grantor for the loss resulting from the mistake, by handing over the sums recovered for the infringement of the easement, — substantially the result attained by the New York courts. Although any suggestion of rescission for mutual mistake as to the legal effects of an instrument has been consistently repudiated in New York,[10] yet the recent decisions may indicate a tendency to apply the doctrine, at least in certain cases. With the application of this principle the results reached in these easement cases seem correct; without it there appears to be difficulty in discovering any basis for legal or equitable rights in these attempts to sever easements.

EJECTION OF A PASSENGER WHO PRESENTS A WRONG TRANSFER CHECK. — There is apparently a growing tendency on the part of the courts to hold that, where a passenger has been furnished with a wrong ticket, a conductor after hearing an explanation of the circumstances evicts the passenger at his peril on the latter's refusal to pay another fare. A late case so decides. *Georgia Ry. & Electric Co.* v. *Baker*, 54 S. E. Rep. 639 (Ga.). Not only are the authorities upon this point in serious conflict,[1] but often the reasoning of the same court in different cases is inconsistent. It is of course well settled that if a passenger who is rightfully on a car with a proper ticket is evicted through the conductor's mistake as to the sufficiency of the ticket, such ejection is a tort, and the company is liable.[2] Even when a wrong transfer is given, some courts seem to proceed upon the theory that the passenger is rightfully on the second car, since the journey is considered continuous, irrespective of the necessity for a change of cars. Such a view is, however, inconsistent with the facts of the case. A railroad is not under obligation in return for the payment of a fare to carry a passenger to his ultimate destination, but to carry him to the transfer point, and to furnish him with a ticket which shall entitle him to take another car at that point.[3] In issuing a transfer, therefore, the first conductor is in no different situation from the agent who sells a ticket in the station.

When a station agent makes a mistake in issuing a ticket, some courts, though holding that ordinarily the railroad is not liable in tort for a subsequent eviction, make a distinction if the invalidity of the ticket would not be apparent to the holder upon a reasonable examination, and under such circumstances permit a recovery for the eviction.[4] The basis for this distinction is apparently founded on some idea of contributory negligence on the part of the passenger. Other courts adopt reasoning which leads to exactly the opposite result, and hold that the eviction is lawful, except where

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[10] See Arthur *v.* Arthur, 10 Barb. (N. Y.) 1; Curtis *v.* Albee, 167 N. Y. 360, 364; also Western, etc., Co. *v.* Shepard, *supra*, 180.

[1] Indianapolis St. Ry. Co. *v.* Wilson, 161 Ind. 153; Cleveland City Ry. Co. *v.* Conner, 78 N. E. Rep. 376 (Oh.). *Contra*, Norton *v.* Consolidated Ry. Co., 63 Atl. Rep. 1087 (Conn.); Little Rock Ry. & Electric Co. *v.* Goerner, 95 S. W. Rep. 1007 (Ark.).

[2] See 9 HARV. L. REV. 221.

[3] Norton *v.* Consolidated Ry. Co., *supra*.

[4] Murdock *v.* Boston & Albany R. R. Co., 137 Mass. 293. *Cf.* Bradshaw *v.* South Boston R. R. Co., 135 Mass. 407.

from the face of the ticket the conductor should see that a mistake had been made, — as where a mileage book was marked to expire on the day that it was issued.[5] Now, when the passenger pays his money to the ticket agent, no contract is formed by which the railroad agrees to carry the passenger to his destination. It is not the business of the ticket agent to make contracts for the railroad, but to sell tickets.[6] Therefore the courts which hold to the above view, and yet say that it is a contract and not the ticket that gives the right to transportation, misinterpret completely the nature of the ticket. The true view is that the ticket is the sole valid evidence of the passenger's right to be upon the car.[7] To conduct railroads on any other principle would be impossible.[8] A person who is not supplied with the proper ticket is not rightfully upon the car, and his eviction upon failure to pay another fare is lawful, except that courts might draw the line in the rare case where the conductor actually knows the true facts. The railroad is of course liable; not, however, for a wrongful eviction, but in an action of contract for breach of implied warranty in failing to supply the ticket asked for,[9] or possibly in an action on the case founded on the negligence of the ticket agent. In either case, however, the passenger should suffer the inconvenience of paying another fare, and should not be allowed to increase the damages by requiring the conductor to eject him.[10]

THE TAXABLE SITUS OF TANGIBLE PERSONAL PROPERTY. — It is elementary that a state cannot tax tangible property which has neither a legal nor a physical situs therein.[1] A tax on tangible property is in theory a price exacted for protection given; and if the property is neither actually nor constructively situated where it can enjoy such protection, the tax is constitutionally invalid, as a taking of property without due process of law.[2] How far a state may constitutionally tax its citizens according to their ability to pay, — as by a tax on incomes, — or exact a price for a privilege conferred, — such as a franchise, — presents different questions, which will not be discussed. The question here is simply how and when tangible personalty acquires a situs in one or more states, so that a tax thereon is constitutionally valid.

In ancient times the maxim *mobilia sequuntur personam* applied alike to tangible and intangible personalty. To-day, if tangible personalty remains in a state a sufficient time, it may acquire a taxable situs therein, though the owner is domiciled in another state.[3] If, however, the use to which the property is put prevents it from acquiring a physical situs, the maxim may be applied to determine the legal situs for taxation. Thus a vessel engaged in interstate commerce is taxable at the owner's domicile,[4] although

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[5] Krueger *v.* Chicago, etc., Ry. Co., 68 Minn. 445.
[6] See 1 HARV. L. REV. 30.
[7] N. Y., etc., Ry. Co. *v.* Bennett, 50 Fed. Rep. 496. See also 10 HARV. L. REV. 186; 12 *ibid.* 61; 14 *ibid.* 70.
[8] See Pouilin *v.* Canadian Pac. Ry. Co., 52 Fed. Rep. 197, 199.
[9] Western Maryland R. R. Co. *v.* Schaun, 97 Md. 563. See also 9 HARV. L. REV. 353.
[10] Hall *v.* Memphis & Charleston R. R. Co., 15 Fed. Rep. 57.

[1] Ayer & Lord Tie Co. *v.* Kentucky, 202 U. S. 409.
[2] Union, etc., Transit Co. *v.* Kentucky, 199 U. S. 194.
[3] Pullman's Palace Car Co. *v.* Pennsylvania, 141 U. S. 18.
[4] See St. Louis *v.* The Ferry Co., 11 Wall. (U. S.) 423. See Ayer & Lord Tie Co. *v.* Kentucky, *supra.*